

September 16, 2016

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Filing of INCOMPAS on *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106

Dear Ms. Dortch,

INCOMPAS respectfully submits this *ex parte* letter in the above-referenced proceeding to provide additional guidance and supplement positions taken during an August 2nd *ex parte* meeting with the Wireline Competition Bureau.¹

As we noted in our previous meeting, given the Commission's intention to apply the proposed rules only to broadband Internet access services ("BIAS") offered on a mass market retail basis, the Commission should exempt business customers entirely from subpart U of the Commission's rules, instead allowing the plain language of Section 222 to govern those relationships.

Nonetheless, should the Commission elect to harmonize the current customer propriety network information ("CPNI") rules for voice services with the proposed rules for BIAS providers, INCOMPAS suggested that the Commission honor existing, private sector practices telecommunications carriers use to protect CPNI and maintain the flexibility in the current rules that provide for exemptions and alternative arrangements for business customers. INCOMPAS then provided several specific examples of how the proposed rules could be modified to ensure that they do not disrupt policies and practices that already comply with CPNI rules.²

¹ See Letter from Christopher Shipley, Attorney & Policy Advisor for INCOMPAS, WC Docket No. 16-106 (Aug. 4, 2016) ("INCOMPAS Letter").

² See INCOMPAS Letter at 2-3. We indicated that harmonizing the proposed rules with current practices will have a number of benefits for customers and providers, such as eliminating duplicate or excessive notifications, streamlining administrative procedures, and removing confusing overlap between services.

With respect to the proposal, INCOMPAS argued that the NPRM makes no distinction between “sensitive” and “non-sensitive” information in its proposed definition of customer proprietary information, which includes CPNI and personally identifiable information (“PII”). We stated that the Commission should consider adopting the customer approval framework supported by the Federal Trade Commission (“FTC”), which would reserve opt-in requirements for the use of sensitive data.³ To further assist the Bureau in defining CPNI that is sensitive, INCOMPAS recommends consideration of the following definition:

Sensitive Customer Proprietary Network Information is customer proprietary network information, as defined in 47 U.S.C. § 222(h)(1), that is individually identifiable information that: (a) is knowingly collected from children under 13 years of age or is collected by a carrier with services directed at children under 13; (b) is financial account information for banking, investment, or credit services; (c) is health information regarding the past or present physical or mental health condition of an individual, the provision of health care to an individual, and past or present payment or amounts owed for the provision of health care to an individual; or (d) is precise geolocation data at a given point in time unless there are a sufficient number of devices in a precise location such that identification of a particular individual is unlikely. Sensitive CPNI excludes publicly available information and subscriber list information, as defined in 47 U.S.C. § 222(h)(3).⁴

This approach to the sensitivity of data is consistent with the categories of sensitive information included in the FTC’s March 2012 Report on consumer privacy⁵ and takes into consideration areas where Congress has acted to ensure that consumers receive appropriate protection given the nature of the information. Furthermore, INCOMPAS members providing voice services view the aforementioned information as sensitive in nature and believe that this definition could be instructive should the Commission choose to harmonize the current CPNI framework with the proposed BIAS privacy rules.

³ When used for first party marketing, however, sensitive CPNI should not require opt-in consent unless the product or service is designed to target customers based on such information. This is consistent with the FTC’s 2012 Privacy Report. The agency recognized that, in these instances, “the risks to consumers may not justify the potential burdens on general audience businesses that incidentally collect and use sensitive information.” *See* FED. TRADE COMM’N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE: RECOMMENDATIONS FOR BUSINESSES AND POLICYMAKERS (2012) (“FTC Privacy Report”) at 47-48.

⁴ The record contains significant debate concerning the Commission’s jurisdiction over PII. The definition we propose offers a path forward for the Commission’s consideration of sensitivity of CPNI.

⁵ *See* FTC Privacy Report at 58.

Please do not hesitate to contact me if you have questions about this submission.

Respectfully submitted,

/s/ Christopher L. Shipley

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